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**United States Court of Appeals**

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July 10, 2015

Ms. Jeannette Clack  
Western District of Texas, El Paso  
United States District Court  
525 Magoffin Avenue  
Room 108  
El Paso, TX 79901-0000

No. 14-50073 USA v. Justin Holmes  
USDC No. 3:12-CR-2032-1

Dear Ms. Clack,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

*Lytle W. Cayce*

By:  
Nancy F. Dolly, Deputy Clerk  
504-310-7683

cc:

Mr. Joseph H. Gay Jr.  
Mr. Justin Christopher Holmes  
Mr. Mark Randolph Stelmach  
Mr. Joseph Dean Vasquez

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 14-50073  
Summary Calendar

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D.C. Docket No. 3:12-CR-2032-1

United States Court of Appeals

Fifth Circuit

**FILED**

June 18, 2015

Lyle W. Cayce  
Clerk

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JUSTIN CHRISTOPHER HOLMES,

Defendant - Appellant

Appeals from the United States District Court for the  
Western District of Texas, El Paso

Before PRADO, OWEN, and GRAVES, Circuit Judges.

JUDGMENT

This cause was considered on the record on appeal and the briefs on file.

It is ordered and adjudged that the judgment of the District Court is affirmed.

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

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No. 14-50073  
Summary Calendar

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United States Court of Appeals  
Fifth Circuit

**FILED**

June 18, 2015

Lyle W. Cayce  
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Plaintiff-Appellee

UNITED STATES OF AMERICA,

v.

JUSTIN CHRISTOPHER HOLMES,

Defendant-Appellant

---

Appeals from the United States District Court  
for the Western District of Texas  
USDC No. 3:12-CR-2032-1

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Before PRADO, OWEN, and GRAVES, Circuit Judges.

PER CURIAM:\*

Justin Christopher Holmes appeals his conviction for solicitation of child pornography, asserting that the district court violated the absolute rule against judicial participation in plea negotiations under Federal Rule of Criminal Procedure 11(c)(1). We review forfeited Rule 11 objections for plain error, and the “silent defendant has the burden to satisfy the plain-error rule.” *United States v. Vonn*, 535 U.S. 55, 58-59 (2002). Holmes must show a forfeited

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

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error that is clear or obvious that affects his substantial rights. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). A violation of Rule 11(c)(1) violates a defendant's substantial rights if the record as a whole reflects a reasonable probability "that, but for the [district court's] exhortations, [the defendant] would have exercised his right to go to trial." *United States v. Davila*, 133 S. Ct. 2139, 2150 (2013). If Holmes shows a clear or obvious error that affects his substantial rights, we have the discretion to correct the error but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *See Puckett*, 556 U.S. at 135.

During a pre-trial hearing on Holmes's motion for appointment of new counsel, the district court questioned defense counsel about whether Holmes had seen the "sickening" evidence against him, which included images that were "the worst that [the court had] ever seen in any child pornography case." The court indicated that potential jurors would view a sample of the images during voir dire and noted it "would keep the ones that didn't get sick." After reiterating that the jury pool would see the images before the trial began, the court asked whether the Government had offered Holmes a plea deal and the details concerning the offer. The court instructed the prosecutor to put the parties' tentative agreement on the record and questioned Holmes about his interest in the plea offer. The court agreed to appoint new counsel to give Holmes his requested "second opinion" about the case but declined to "saddle" anyone else in the Federal Public Defender's office with the case.

The district court's comments suggested that it "had a predisposition to believe that [Holmes] was guilty" and "were akin to the court advocating . . . that the plea was in [his] best interest." *United States v. Hemphill*, 748 F.3d 666, 674-75 (5th Cir. 2014). Taken in context and read in their entirety, the comments amounted to "participation in or interference with the plea

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negotiation process” that was a clear or obvious violation of the “blanket prohibition” of Rule 11(c)(1). *See id.* at 672-75.

Although Holmes claims that he pleaded guilty because of the trial court’s comments, he cites to nothing in the record that supports his claim. The record reflects that he waited three months after the court’s comments to enter his guilty plea, and he testified at his rearraignment that no one had threatened, coerced, or intimidated him to plead guilty. Because he fails to show a reasonable probability that he would have proceeded to trial but for the district court’s comments, we find no plain error. *See Davila*, 133 S. Ct. at 2149-50; *Vonn*, 535 U.S. at 58-59. The judgment of the district court is AFFIRMED.